

**OMSL Disciplinary Cases before the  
Kentucky Mine Safety Review Commission**

**Cases Filed in 2006**

1. **OMSL v. Clyde Dingess**, Docket No. 06-MSRC-001: (Pikeville): This action was brought due to MSHA citations 7395314 and 7395313 due to Mr. Dingess failing to follow approved roof control and ventilation control. **STATUS: ACTIVE** – Probable cause was found February 9, 2006. Settlement terms have been reached. The agreement was mailed to Mr. Dingess on February 15, 2006. Settlement approved by Commission on April 13, 2006. Settlement terms probate for 6 months of underground mine foreman's certificate.
2. **OMSL v. Ray Lamb**, Docket No. 06-MSRC-002 (Harlan): Action brought by agency against foreman for three violations cited by MSHA. **STATUS: ACTIVE** – Seeking revocation and probation of certifications. Probable cause determined March 9, 2006. Hearing set for May 11, 2006.
3. **OMSL v. Kevin R. Yonts and Sonny Ward**, Docket No. 06-MSRC-003 (Martin) filed: 2/23/06. Subject: KDMM inspector conducted an investigation of underground coal mine, followed by two other inspections within the next few weeks. Numerous unsafe conditions/violations were found, many of which placed miners in imminent danger of death or serious injury; e.g., cutting machine with exposed wiring, scoops with inoperable methane monitors and parking brakes, no test holes, absence or damaged roof bolts, cable crossing conveyor without conduit, failure to properly store flammable materials, producing coal over a closure order, etc. The violations were the responsibility of the superintendent Yonts and section foreman Ward. **STATUS: probable cause found March 9, 2006. Motion to Dismiss filed by Yonts. Hearing set for May 11, 2006. ACTIVE**
4. **OMSL v. Bobby Young, Michael P. Collins and Jerry Oliver**, No. 06-MSRC-004 (Hazard): This action was brought by OMSL requesting probation and revocation of the Defendants' certificates due to the issuance of thirty (30) separate Non-Compliances/Closure Orders for mine safety violations. **STATUS: ACTIVE** – Probable cause determined by the Commission on March 9, 2006. Answer filed. Hearing set for May 11, 2006.
5. **OMSL v. Phillip Short and Billy Ray McCoy**, No. 06-MSRC-005 (Pikeville): Agency action against named defendants for violations relating to serious electrical accident. Seeking suspensions and probation of certificates. **STATUS: ACTIVE** – Probable cause found on March 9, 2006. Answer filed. Hearing set for 5/11/06.

6. **OMSL v. Rick Fouts**, No. 06-MSRC-006 (Hazard): Action brought by agency against foreman for method of mining violation involving fatality. **STATUS: ACTIVE** – Seeking suspension of foreman’s certification and probation of other certifications. Probable cause determined March 9, 2006. Hearing set for July 13, 2006.
7. **OMSL v. Steven Lester, William Ratliff, Micky Stapleton and Victor Newsome**, No. 06-MSRC-007 (Pikeville): This action was brought by OMSL requesting probation and revocation of the Defendants’ certificates due to the issuance of twenty-two (22) separate Non-Compliance/Closure Orders for electrical safety violations. **STATUS: ACTIVE** – Probable cause determined by the Commission on March 9, 2006. Hearing set for June 8, 2006.
8. **OMSL v. Keith Collins, Ronald Bartley and James Hager**, No. 06-MSRC-008: (Pikeville): Agency action against named defendants for 66 violations including no foreman on site, untrained miners, fan stopped improperly, no firefighting equipment, no self-rescuers, electrical malfunctions and mechanical malfunctions. Probable cause determined by the Commission on April 13, 2006. Hearing set for July 13, 2006. Settlement negotiations are being conducted with Collins and Hager.
9. **OMSL v. Charles Manuel and Estill Johnson**, No. 06-MSRC-009: (Martin): Filed March 17, 2006. Pill found in Johnson’s possession. Smoking material found underground. Electrical problems as well as brake problems were found on scoop. Probable cause determined by the Commission and trial is set for July 13, 2006. Defendants filed discovery request on April 19, 2006.
10. **OMSL v. Johnnie Belcher**, No. 06-MSRC-010 (Pikeville): Agency action against named defendant for violations relating to certification of hours of instruction for miner training. Seeking probation of certificate for 18 months. Awaiting probable cause order.
11. **OMSL vs. Terry L. Hall, Russell L. Stidham, William S. Cornette and Harvey B. Campbell**, No. 06-MSRC-011: (Martin): Complaint filed March 28, 2006. This action was brought by OMSL requesting probation and revocation of the Defendants’ certificates due to the issuance of five (5) separate Non-Compliance for safety violations that resulted in an injury. **STATUS: ACTIVE** – Probable cause determined by the Commission on April 13, 2006. Hearing set for July 13, 2006.
12. **OMSL v. Gary Simpson, Shannon Hurt, Orville Campbell and Tim Brock**, No. 06-MSRC-012: (Hazard): Filed April 14, 2006. Agency action against defendants for 21 violations. Electrical and mechanical malfunctions, no pre-shift exam, and not following roof control plan.

13. **OMSL v. Robert Smith**, No. 06-MSRC-013: (Hazard): Filed April 14, 2006. Agency action against defendant for 15 violations. Smith failed to properly conduct pre-shift exam resulting in serious non-fatal accident report, inadequate ventilation controls.
14. **OMSL v. David Bevins**, No. 06-MSRC-014: (Pikeville): Filed April 17, 2006. Agency action against defendant for alleged smoking violation.
15. **OMSL v. Lonnie Moore & Gary Rutherford**, No. 06-MSRC-015: (Harlan): This action was brought against the mine superintendent and foreman for various violations arising from the Stillhouse Mining double fatality roof fall in August 2005. The violations pertain to failures to adequately train personnel in the retreat mining plan and allowing work to continue under dangerous conditions. Probable cause determination scheduled for May 11, 2006.

#### **Cases Filed in 2005**

1. **OMSL v. Jerry L. Morman**, Docket No. 05-MSRC-001 filed: 1/10/05 subject: company fire inspection manager smelled cigarette smoke underground; upon performing a smoking search, cigarettes and a lighter were found on Morman's person; miner was discharged by company; **STATUS:** MSRC found probable cause on 1/13/05; OMSL entered into a settlement agreement with Morman that was accepted by the Commission on May 26, 2005, **wherein ? ACTIVE**
2. **OMSL v. Alan B. Pigman**, Docket No. 05-MSRC-002 filed: 1/11/05 subject: shift foreman notified by a coal miner that another miner was smoking underground; miner, who was a trainee (less than 45 days underground experience), was taken outside where a smoking search was performed; cigarettes and a lighter found on Pigman's person; miner was discharged by company **STATUS:** MSRC found probable cause on 2/10/05; OMSL has entered into settlement agreement with Pigman: temporary underground miner's certificate placed on probation until Pigman has re-taken the 40-hour inexperienced miner training course from OMSL and re-passed the underground miner's examination; must re-take course and pass exam within 120 days, effective 4/19/05, or temporary certificate will be permanently revoked; if Pigman obtains underground miner's certificate, it will be placed on probation for 1 year. Training completed: **Yes – 8/3/05**
3. **OMSL v. Charles Vanderpool**, Docket No. 05-MSRC-003 filed: 1/14/05 subject: shift foreman was advised by crew members that they smelled cigarette smoke near an underground belt head; foreman performed smoking search of shoveler at belt head, and cigarettes and lighter were found on Vanderpool's person; miner was fired by company **STATUS:** MSRC found probable cause on 2/10/05; OMSL has entered into settlement agreement with Vanderpool:

underground miner's certificate placed on probation for 1 year, effective 4/19/05 + 8 hours of special safety training from OMSL

4. **OMSL v. Simon Ratliff**, Docket No. 05-MSRC-004 filed: 2/24/05 subject: mine superintendent, whose underground mine foreman's certificate was on probation for previous offense (see No. 03-MSRC-008) committed numerous violations: he required miners under his supervision to work under unsafe conditions (no brakes on equipment; ATRS on roof bolting machine would not reach mine roof); discharged 4 miners for making safety complaints; after miners were reinstated, he discharged them again for filing safety discrimination complaints with MSHA; falsified preshift examination record; attempted to impede federal investigation by instructing miner to lie to MSHA investigators; and repeatedly violated the terms of his probation from prior case **STATUS: ACTIVE** – MSRC found probable cause on 4/14/05; MSRC allowed three of the miners discharged by Ratliff to intervene on a limited basis; trial held for March 9, 2006.
5. **OMSL v. Alger B. Jent, Jerry D. Morgan & James E. Byrd**, Docket No. 05-MSRC-005 filed: 3/9/05 subject: OMSL inspectors conducted a High Impact Safety Awareness ("HISA") inspection of underground coal mine in response to complaint; numerous unsafe conditions/violations were found, including 7 which placed miners in imminent danger of serious injury or death; e.g., an adequate preshift examination for hazardous conditions had not been performed; a crosscut was mined into an unsupported entry; extended continuous miner cuts had not been roof-bolted; various other areas of the mine had unsupported mine roof; miners had worked under unsupported roof; electrical circuits were "bridged out", thus defeating a critical safety feature; cigarette butts were found underground **STATUS: ACTIVE** – MSRC found probable cause against all defendants on 4/14/05; MSRC approved OMSL's settlement agreement with Morgan: electrician's certificate placed on probation for one year, effective 3/23/05; must take electrical training from OMSL's chief electrical inspector; must re-take and pass Kentucky electrical examination within 120 days or electrical card will be suspended until he passes exam; trial on Jent is set for April 8, 2006, although settlement discussions are underway. Jerry Morgan - completed training, but failed exam – electrician's certificate has been suspended. James Byrd – passed exam **2/23/06**.
6. **OMSL v. Dennis Jewell**, Docket No. 05-MSRC-006 filed: 4/1/05 subject: OMSL inspector caught electrician underground with cigarettes and a lighter on his person; miner was suspended for 3 days by the company; **STATUS: MSRC** found probable cause on 4/14/05; OMSL has entered into settlement agreement with Jewell that was accepted by the Commission on May 26, 2005, wherein his electrician's certificate placed on probation for one year, underground miner certificate placed on probation for one year, 8 hours of safety training within 45 days, effective 5/16/05. Training completed: **Yes – 6/29/05**

7. **OMSL v. Hobert Hoskins & Rodney Morgan**, Docket No. 05-MSRC-007 filed: 4/8/05 subject: company's approved roof control plan allowed maximum continuous miner cuts of 20 feet; MSHA inspectors found a crosscut cut 43 feet deep, which exposed miners to imminent danger of serious injury or death; Hoskins was the section foreman and Morgan operated the continuous miner; **STATUS: ACTIVE** – MSRC found probable cause against both defendants on 4/14/05; OMSL has entered into settlement agreement with Morgan approved by the Commission on November 11, 2005, wherein his underground miner's certificate was probated for one year from that date; the Commission entered a default judgment against Hoskins on November 11, 2005 that is currently on appeal to Franklin Circuit Court. Hobert Hoskins – Suspension completed: **Yes – 1/9/06**
8. **OMSL v. Larry Chapman**, Docket No. 05-MSRC-008 filed: 4/22/05 subject: OMSL electrical inspector observed chief electrician using "jumper cables" to unlawfully "blow the cable" for the section feeder (i.e., in order to locate a fault in the trailing cable), which created an imminent danger of death or serious injury; **STATUS:** MSRC made probable cause determination on 5/26/05 and a settlement was also approved on that date wherein Chapman's electrician's certificate placed on a one year revocation period, must complete 4-8 hours of special training from OMSL's chief electrical inspector within 60 days, must take and pass electrician's exam, certificate revoked until pass, underground miner certificate placed on one year probation, effective 5/20/05. Training completed: **Yes – 6/13/05**
9. **OMSL v. Gregory Saragas**, No. 05-MSRC-O11 (Barbourville): The action was brought by OMSL following statements given to OMSL investigators alleging that Saragas issued training certifications without giving the required training. **STATUS: ACTIVE** – Probable cause found on November 11, 2005. Settlement negotiations were not successful. The hearing on the matter is set for April 13, 2006.
10. **OMSL v. Ann Epperson**, No. 05-MSRC-012 (Barbourville): The action was brought by OMSL following statements given to OMSL investigators alleging that Epperson issued training certifications without giving the required training. MSHA has also ordered her training certificate suspended. **STATUS:** Probable cause found on November 11, 2005. OMSL entered into a settlement agreement wherein **her mine instructor's card was permanently revoked without possibility of reinstatement** and all other certifications (MET, Surface Mine – Foreman, and Surface Miner) were probated for one year. The settlement was approved on February 9, 2006 and the terms effective that date.
11. **OMSL v. Homer Sams, Lonnie Rice, Delmas Jackson & Floyd Hibbard**, No. 05-MSRC-009 (Barbourville): Electrical inspections revealed numerous unsafe conditions/violations in the Century Operations No. 4 Mine. Most of the more than twenty (20) violations involved improper alterations of circuits that disabled important safety equipment. **STATUS: ACTIVE** – Probable cause determined

on September 8, 2005. Answers filed by Respondents. Settlement terms have been proposed without resolution. The hearing is set for April 13, 2006.

12. **OMSL v. Darrell Banks, Onis R. Smith & Conley Horn**, No. 05-MSRC-010 (Martin): Referral of case from MSHA. Inspection by MSHA found smoking materials in the area of active mining. Those miners to whom the materials belonged have been cited and the foreman was cited for failure to conduct a proper search. **STATUS: ACTIVE** – Probable cause determined on September 8, 2005. Answers filed by respondents. The case is being held in abeyance pending the conclusion of a federal investigation. Status report is due in May 2006

#### **Cases Filed in 2004**

1. **KDMM v. Marty Helton, John Payne & Russell Taylor**, Docket No. 04-MSRC-001 filed: 1/20/04 subject: KDMM inspectors conducted a special inspection ("blitz") of underground coal mine while company was performing rehabilitation work; numerous unsafe conditions/violations were found, many of which placed miners in imminent danger of death or serious injury; e.g., roof bolts had been sheared off for a distance of 50 feet, exposing miners to unsupported mine roof; other areas of the roof were not adequately supported; the cathead for the continuous miner was "bridged out", thus defeating the ground monitoring circuit; brakes on the scoop and shuttle cars were inoperative; the violations were the responsibility of Helton, the mine superintendent and chief electrician; Payne, the mine foreman; and Taylor, the section foreman and preshift examiner **STATUS:** KDMM's settlement agreements with all 3 defendants approved by MSRC: Helton (effective 3/31/04, underground mine foreman's certificate suspended indefinitely until he takes 8 hours safety training course from KDMM and re-takes and passes Kentucky underground mine foreman's examination; also, electrician's certificate suspended indefinitely until he takes 4 hours electrical training from KDMM's Chief Electrical Inspector and re-takes and passes Kentucky electrical exam; underground mining instructor's certificate also indefinitely suspended until Helton's foreman's certificate is reinstated); Payne (effective 3/31/04, underground mine foreman's certificate suspended indefinitely until he takes 8 hours safety training course from KDMM and re-takes and passes Kentucky underground mine foreman's examination); Taylor (underground mine foreman's certificate placed on probation for 18 months, effective 2/2/04 + he must take 8 hour safety training course from KDMM within 30 days). Marty Helton – Training completed: **Yes – 5/27/04 (Safety Training) and 12/21/04 (Electrical Training)** - Exam passed: **Yes – 6/2/04 underground mine foreman.** John Payne (**NON-ACTIVE**) – Training completed: **Yes.** Exam passed: **Yes – 5/24/04.** Russell Taylor (**NON-ACTIVE**) – Training completed: **Yes.** Probation completed: **Yes – 9/2/05**
2. **KDMM v. Willie "Tick" Sizemore, Jimmy Morgan & Floyd Hibbard**, Docket No. 04-MSRC-002 filed: 2/4/04 subject: KDMM inspectors conducted a special inspection ("blitz") of underground coal mine, followed by 2 other

inspections within the next few weeks; numerous unsafe conditions/violations were found, many of which placed miners in imminent danger of death or serious injury; e.g., the ATRS on the roof bolting machine did not reach the mine roof; various components on electrical equipment were "bridged out"; there was a 12' x 16' area of unsupported mine roof; the primary escapeway was blocked with water and could not be traveled; there was excessive dust at the mine face because 26 of 28 water sprays on the continuous miner were inoperative; the panic bar on the scoop was inoperative; the violations were the responsibility of Sizemore, the mine superintendent; Morgan, the section foreman at the time of the 1st and 2nd inspections; and Hibbard, the section foreman at the time of the 3rd inspection **STATUS: ACTIVE** - Probable cause found against all 3 defendants by the MSRC on 2/18/04; KDMM's settlement agreements with Morgan and Hibbard approved by MSRC: Morgan's underground mine foreman's certificate suspended for 6 months, effective 3/18/04, followed by one year period of probation + Morgan must take 8 hour safety training course from KDMM within 30 days; Hibbard's underground mine foreman's certificate placed on probation for 9 months, effective 5/18/04 + he must take 8 hour safety training course from KDMM; Sizemore was tried before the MSRC in July 2005. An order was issued on 9/9/05 by MSRC that Sizemore's underground mine foreman's certificate and electrician's certificate was placed on a 18 month revocation period, underground miner's certificate suspended for 7 days effective 30 days after entry of order, must take and pass underground mine foreman and electrician exam to be recertified after revocation period ends. Sizemore has appealed the order to Franklin Circuit Court. Jimmy Morgan – Suspension period completed: **Yes – 9/21/04**. Training completed: **Yes – 5/24 & 5/25/04**. Floyd Hibbard – Probation completed: **Yes - 3/16/05**. Training completed: **Yes – 3/31/06**.

3. **KDMM v. Clifford Morgan, James D. Burton, Carson Sizemore & Donavan Asher**, Docket No. 04-MSRC-003 filed: 2/6/04 subject: KDMM inspectors conducted a special inspection ("blitz") of underground coal mine; numerous unsafe conditions/violations were found, many of which placed miners in imminent danger of death or serious injury; e.g., the control circuit for the continuous miner was "bridged out", so the machine would not shut down when the "panic bars" on the mobile bridge carriers were depressed; the panic bars on the carriers were physically damaged to the extent that they would not work; the lid switch circuit on the section power center was "bridged out"; the cathead for the continuous miner was not locked and tagged while electrical work was being performed on the machine; there were exposed electrical components in the belt power center; a mining entry was cut excessively wide; the continuous miner had taken a "deep cut", which exposed miners to unsupported mine roof; all of the violations were the responsibility of Morgan, the mine superintendent and chief electrician; all but the "deep cut" violation were the responsibility of Burton, the 2nd shift mine foreman and electrician, and Sizemore, the 2nd shift section foreman; the "deep cut" violation was the responsibility of Asher, the day shift section foreman **STATUS: ACTIVE** - Probable cause found against all 4

defendants by the MSRC on 2/24/04; KDMM has entered into settlement agreements with 3 defendants: Burton (underground mine foreman's certificate and electrician's certificate each placed on probation for 6 months, effective 4/14/04 + he must take 4 hours of safety training from KDMM and 4 hours of electrical training from KDMM's Chief Electrical Inspector); Sizemore (underground mine foreman's certificate placed on probation for 6 months, effective 4/14/04 + he must take 8 hours of safety training from KDMM); Asher (underground mine foreman's certificate placed on probation for 1 year, effective 4/14/04; as condition of probation, Asher must take entire underground mine foreman's course, then re-take and pass underground mine foreman's examination within one year period; if he does not pass foreman's exam within one year, his foreman's certificate will be indefinitely suspended until he does pass the exam; NOTE: Asher's foreman's certificate indefinitely suspended on 4/14/05 for his failure to pass the foreman's exam during the 1-year probationary period. He has still not passed the exam. A settlement with Morgan was approved by the Commission on May 26, 2005 wherein his underground mine foreman's certificate was placed on a 6 month probation, electrician's certificate placed on a 6 month probation, 4 hours of safety training within 60 days, additional 4 hours of special electrician training from OMSL's chief electrical inspector within 60 days, effective 5/23/05. Clifford Morgan (**NON-ACTIVE**) – Training completed: **Yes – 6/13/05**. Probation completed: **Yes 11/23/05**. James D. Burton (**NON-ACTIVE**) – Training completed: **Yes – 5/24/05**. Probation completed: **Yes – 10/14/04**. Carson Sizemore (**NON-ACTIVE**) – Training completed: **Yes – 5/25/04**. Probation completed: **Yes – 10/20/04**

4. **KDMM v. Jeffery Ambrose**, Docket No. 04-MSRC-004 filed: 4/21/04 subject: applicant for employment fraudulently misrepresented himself to mine operator as a certified MET; miner was hired as a roof bolting machine operator and designated as the 2nd shift MET; in fact, miner had never completed an MET course or taken the MET examination **STATUS**: KDMM entered into settlement agreement with Ambrose, effective 5/19/04, which has been approved by MSRC; Ambrose's underground mine foreman's certificate is suspended indefinitely until he has taken entire underground mine foreman's course, then re-taken and passed underground mine foreman's examination; if and when his foreman's certificate is reinstated, it will be placed on probation for one year; also, Ambrose is prohibited from taking the MET examination for a period of 2 years. Ambrose took class. Failed underground mine foreman's exam.
5. **KDMM v. Kenneth L. Meek**, Docket No. 04-MSRC-005 filed: 6/9/04 subject: Kentucky law requires underground coal miners to receive 16 hours of annual safety retraining; Meek received 8 hours of annual retraining from a private training company, then forged the training certificate to make it appear that he had received the required 16 hours; the mining company's safety director notified KDMM that it had a miner working underground with a bogus training certificate **STATUS**: MSRC found probable cause on 8/12/04; MSRC approved OMSL's settlement agreement with Meek: Meek's underground mine foreman's certificate



and underground miner's certificate each placed on probation for 1 year, effective 9/2/04. Probation Completed: **Yes – 9/2/05 – NON-ACTIVE**

6. **KDMM v. Gary McCoy**, Docket No. 04-MSRC-006 filed: 6/17/04 subject: Kentucky law requires underground coal miners to receive 16 hours of annual safety retraining; McCoy received 8 hours of annual retraining from a private trainer, then forged the training certificate to make it appear that he had received the required 16 hours; during a review of the mine operator's training records, the alteration of the training form was noticed and KDMM ordered McCoy withdrawn from the mine until he received the requisite annual retraining **STATUS:** MSRC approved KDMM's settlement agreement with McCoy, effective 6/23/04; McCoy's underground miner's certificate placed on probation for one year, plus McCoy must take 8 hours of additional safety training from KDMM within 45 days. Training completed: **Yes – 7/20/04**. Probation completed: **Yes – 6/23/05 – NON-ACTIVE**
7. **KDMM v. George C. Waugh & Jamie Howell**, Docket No. 04-MSRC-007 filed: 7/6/04 subject: methane explosion occurred while Howell, a scoop operator (who was not a certified electrician) performed electrical work on scoop that had de-energized near mine face because of excessive accumulation of methane gas; electrical arc ignited the methane, causing severe burns to Howell's face; as he crawled away from the scoop, a second explosion occurred, which caused extensive damage in the mine and could have killed everyone working underground; scoop operator had unlawfully failed to check for methane prior to entering heading; accident investigation revealed numerous unsafe conditions/violations of Kentucky mining laws, which were the responsibility of Waugh, the section foreman; e.g., Waugh's preshift inspection for hazardous conditions was inadequate; rock dust was not maintained within 40 feet of the face in 2 headings; the last row of permanent roof bolts were too far from the mine face in 2 headings; the methane monitor on a scoop was inoperative; a non-permissible mantrip was being used in the return entries **STATUS:** MSRC approved OMSL's settlement agreements with both defendants; Howell (probation of underground miner's certificate and shot firer's certificate, each for one year, effective 8/9/04); Waugh (probation of underground mine foreman's certificate for 2 years, effective 1/11/05); in addition, both defendants must take 8 hours of special safety training from OMSL. George C. Waugh – Training completed: **Yes – 3/1/05**. Jamie Howell (**NON-ACTIVE**) – Training completed: **Yes – 7/26/04** – Probation completed: **Yes – 8/9/05**
8. **KDMM v. Terry Triplett**, Docket No. 04-MSRC-008 filed: 7/6/04 subject: surface mining and MET training instructor fraudulently issued training certificate; **STATUS:** MSRC found probable cause against Triplett on 8/12/04; MSRC approved OMSL's settlement agreement with Triplett: Triplett's **surface mining instructor's certificate and MET instructor's certificate each permanently revoked**, effective 9/2/04, and his surface mine foreman's certificate suspended for 1 year. Suspension period completed: **Yes**

9. **OMSL v. Paul J. Cochran**, Docket No. 04-MSRC-009 filed: 7/11/04 subject: MSHA discovered equipment operator at underground mine signing preshift and onshift examination reports (using a bogus underground mine foreman's certificate number) although he was not a certified foreman **STATUS:** MSRC found probable cause against Cochran on 8/12/04; MSRC approved OMSL's settlement agreement with Cochran: Cochran's underground miner's certificate placed on probation for 3 years, effective 8/20/04 + he must receive 8 hours of special safety training from OMSL within 45 days; during 3-year probationary period, Cochran is prohibited from taking the underground mine foreman's examination; if Cochran violates the terms of his probation, he will be permanently barred from taking the underground mine foreman's exam.
10. **OMSL v. Robert Dotson, Jr.**, Docket No. 04-MSRC-010 filed: 8/24/04 subject: Dotson was disciplined by the MSRC for having a cigarette underground (see case no. 03-MSRC-017); MSRC placed Dotson's underground miner's certificate on probation for one year and ordered him to take an 8-hour safety training course from KDMM within 30 days; Dotson disregarded Commission's order to receive safety training, so OMSL sought the revocation of Dotson's underground miner's certificate for an indefinite period of time - i.e., until Dotson re-took the 40-hour training course for new underground miners, passed the new underground miner examination, then appeared before the Kentucky Mining Board for a determination as to whether he should be re-certified as an underground coal miner **STATUS:** MSRC found probable cause against Dotson on 9/9/04; MSRC approved OMSL's settlement agreement with Dotson, whereby Dotson must take the 8 hours of special safety training from OMSL within 35 days or his underground miner's certificate will be automatically revoked, effective 11/23/04; in addition, the probation of Dotson's underground miner's certificate was extended for one additional year (until 4/13/06). Training completed: **Yes – 1/6/05**
11. **OMSL v. Raymond Little, Jr., Gary L. Meyers, Tommy Osborne, John H. Mullins & Hubert Thomas**, Docket No. 04-MSRC-011 filed: 9/17/04 subject: mining crew - under the supervision of Little - drilled, shot and hauled coal under unsupported mine roof; section foreman also did not perform adequate preshift examination for hazardous conditions **STATUS:** MSRC found probable cause against all defendants on 10/14/04; OMSL has reached settlement agreements with all 5 defendants: Meyers, Osborne, Mullins & Thomas (probation of shot firer's certificate, each for one year; must take blasters' course from OMSL; must re-take and pass shot firer's examination within 120 days or shot firer's certificate will be suspended); Little (probation of underground mine foreman's certificate for 1 year; 8 hours of special safety training) **ACTIVE.** Raymond Little, Jr. – Training completed: **Yes – 6/29/05.** Gary L. Meyers – Training completed: **Yes – 6/29/05.** Tommy Osborne – Training completed: **Yes – 7/11/05.** John H. Mullins – Training completed: **Yes – 6/29/05**

12. **OMSL v. Roger L. Hill, Ricky Whitaker & Scott Day**, Docket No. 04-MSRC-012 filed: 9/17/04 subject: while performing pillar extraction, both the day shift and 2nd shift mining crews - under the supervision of Hill, Whitaker and Day - violated the company's approved pillar plan by taking mining cuts out of sequence and failing to set numerous safety timbers **STATUS:** MSRC approved the settlement agreements between OMSL and the defendants; the underground mine foreman's certificate of each defendant was placed on probation for 9 months, effective 10/11/04; NOTE: prior to the filing of this action, the company demoted and reduced the pay of all 3 foremen. Roger Hill (**NON-ACTIVE**) – Probation completed: **Yes – 7/11/05**. Scott Day (**NON-ACTIVE**) – Probation completed: **Yes – 7/11/05**. Ricky Whitaker (**NON-ACTIVE**) – Probation completed: **Yes – 7/11/05**
13. **OMSL v. Steven T. Moore, Ricky Bolin, Lonnie Couch & Robert W. Woods**, Docket No. 04-MSRC-013 filed: 9/17/04 subject: OMSL inspectors conducted a High Impact Safety Awareness ("HISA") inspection of underground coal mine; numerous unsafe conditions/violations were found, 18 of which placed miners in imminent danger of death or serious injury; e.g., the mine roof was not adequately supported in many areas; electrical circuit breakers were intentionally "jumped out", thus bypassing/defeating the ground fault monitoring system; the frame of the roof bolting machine was energized; and there were many other electrical violations; Moore and Woods were certified electricians in Virginia, but they were not certified in Kentucky although they regularly performed electrical work at the mine **STATUS:** MSRC has approved OMSL's settlement agreements with all 4 of the defendants; Moore: 1-year revocation of underground mine foreman's certificate; 1-year probation of underground miner's certificate; 4 hours of special safety training; and Moore is prohibited from taking the Kentucky electrical examination for 1 year, each effective 11/29/04; Woods: probation of underground miner's certificate for 2 years, effective 11/29/04, during which time Woods is also prohibited from taking the Kentucky electrical examination; 4 hours of special safety training; Bolin: 1-year probation of underground mine foreman's certificate, effective 12/15/04; must pass foreman's exam within 120 days or certificate will be suspended; 8 hours of special safety training; Couch: revocation of underground mining instructor's certificate for 1 year & probation of underground mine foreman's certificate and underground miner's certificate, each for 1 year, effective 1/13/05; must pass foreman's exam within 120 days or foreman's certificate will be automatically suspended; 8 hours of special safety training. Steven T. Moore – Probation completed: **Yes – 11/29/05** – Revocation period: **Yes – 11/29/05**. Ricky Bolin (deceased) – Probation completed: **Yes – 12/15/05** – **NON-ACTIVE**. Lonnie Couch – Probation completed: **Yes – 1/13/06** – Revocation period completed: **Yes – 1/13/06**.
14. **OMSL v. Claudius Leon Dotson**, Docket No. 04-MSRC-014 filed: 10/19/04 subject: underground coal miner filed safety discrimination complaint against company, alleging unlawful discharge for having made safety complaints; miner was reinstated by company after the filing of his complaint; during course of

MSHA's investigation of complaint, miner was allegedly assaulted and threatened by another hourly employee at the mine **STATUS:** MSRC found probable cause against Dotson on 11/12/04; OMSL's settlement agreement with Dotson approved by MSRC: probation of electrical certificate and underground miner's certificate, each for 18 months, effective 3/21/05

15. **OMSL v. Urshell Smith**, Docket No. 04-MSRC-015 filed: 11/17/04 subject: surface mining training instructor fraudulently issued training certificates to several miners; **STATUS:** MSRC approved OMSL's settlement agreement with Smith (**permanent revocation of Smith's surface mining instructor's certificate & 1-year probation of his surface foreman's certificate, effective 11/30/04**). Probation completed: **Yes – 11/30/05**
16. **OMSL v. Joey W. Tackett**, Docket No. 04-MSRC-016 filed: 11/18/04 subject: KDMM and MSHA inspectors conducted joint inspection of underground mine after receiving a safety complaint; numerous unsafe conditions/ violations were found, including: cigarettes and lighters found underground; 6 miners did not have self-contained self-rescuers underground; the section foreman did not have a gas detection device and had not performed a preshift examination for hazardous conditions; the ATRS system on the roof bolting machine would not set firmly against the mine roof (imminent danger); there was no ventilation on the working section (imminent danger); 3 headings were mined off-center; and roof bolts were installed excessively wide **STATUS:** MSRC found probable cause on 12/9/04; MSRC approved OMSL's settlement agreement with Tackett: 1-year probation of Tackett's underground mine foreman's certificate, effective 3/2/05 + 8 hours of special safety training. Training completed: **Yes – 4/28/05 – Probation completed: Yes – 3/2/06 – NON-ACTIVE**
17. **OMSL v. Harvey Rainwater**, Docket No. 04-MSRC-017 filed: 11/24/04 subject: MSHA inspectors found cigarettes and a lighter, which belonged to Rainwater, underground during "blitz" inspection **STATUS:** MSRC found probable cause on 12/9/04; MSRC approved OMSL's settlement agreement with Rainwater: Rainwater's shot firer's certificate and his underground miner's certificate each placed on probation for 1 year, effective 2/17/05 + 8 hours of special safety training from OMSL. Training completed: **Yes – 2/28/05 – Probation completed: Yes – 2/17/06 – NON-ACTIVE**
18. **OMSL v. Corbett Howell, Corbett Darren Howell, Thomas A. Baker, Thomas L. Carroll & Anthony Baker**, Docket No. 04-MSRC-018 filed: 12/7/04 subject: OMSL inspectors conducted a High Impact Safety Awareness ("HISA") inspection of conventional underground coal mine; deadly combination of unsafe conditions/violations found, including 9 imminent dangers; e.g., the shot firer was not certified; there was inadequate ventilation on the working section and excessive accumulations of loose coal and coal dust; the improper storage of explosives in by the last open crosscut on a non-permissible (i.e., not explosion proof) personnel carrier; cigarettes and lighters found on 4 miners; the foreman's

certificate of the section foreman, Corbett Howell, was still on probation from a previous case regarding a serious blasting injury (see case No. 02-MSRC-008) **STATUS:** MSRC found probable cause on 1/13/05; MSRC approved settlement agreements with 4 of the defendants effective 2/17/05: Darren Howell (suspension of his underground miner's certificate for 20 days, followed by an 18-month probation period, during which time he is prohibited from taking the Kentucky shot firer's examination; 8 hours of special safety training); Carroll, Thomas Baker & Anthony Baker (probation of underground miner's certificate for 1 year each + 8 hours of special safety training each) OMSL has entered into settlement agreement with Corbett Howell (**2nd offense**): suspension of his underground mine foreman's certificate for 6 months; must re-take and pass underground mine foreman's exam during 6-month probationary period or his foreman's certificate will be indefinitely suspended until he passes exam; if and when he passes exam, foreman's certificate will be placed on probation for 1 year; underground miner's certificate placed on probation for 18 months; 8 hours of special safety training from OMSL **ACTIVE**. Corbet Howell – Training completed: **Yes – 5/12/05** – Suspension period completed: **Yes – 10/19/05** – Exam passed: **No as of 10/12/05 he failed**. Anthony Baker – Probation completed: **Yes – 2/17/05** – Training completed: **Yes – 3/1/05**. Thomas A. Baker – Training completed: **Yes** – Probation completed: **Yes - 2/17/06 – NON-ACTIVE**. Corbett Darren Howell – Training completed: **Yes – 3/1/05** – Suspension completed: **Yes – 3/9/05**. Thomas L. Carroll – Training completed: **Yes** – Probation completed: **Yes – 2/17/06 – NON-ACTIVE**.

19. **OMSL v. Highlands Mining & Processing Co., Inc, Charles Robert Stump, Anthony Boggs, Tony Dean, Ricky Bolin, Marty Boggs, Gary V. Planck, Jeremiah Caldwell & Anthony Simpson**, Docket No. 04-MSRC-019 filed: 12/9/04 subject: OMSL issued a closure order to Highlands Mining & Processing because of hazardous roof conditions throughout the working section; OMSL's inspectors told Stump, the mine owner, that the company would have to install 10-foot "rope" bolts throughout the section to abate the closure order ("red tag"); instead, the company decided to discontinue mining and "danger off" some entries, and to install rope bolts on the rest of the section and resume mining those entries; when an OMSL inspector made a follow-up inspection 3 weeks later, he discovered that the company had taken down the safety timbers blocking access to the red-tagged area, had removed the "DANGER - STAY OUT" sign, and had resumed mining in the red-tagged area **STATUS:** MSRC found probable cause against all defendants on 1/13/05; Bolin has prior 1st offense (see case No. 04-MSRC-013); MSRC has approved OMSL's settlement agreements with 6 of the defendants: Anthony Boggs & Dean (6 months revocation each of underground mine foreman's certificate, effective 2/7/05; if they re-take and pass foreman's exam and become re-certified by the Kentucky Mining Board, new mine foreman's certificate will automatically be placed on probation for 1 year; probation of underground miner's certificate for 18 months; 8 hours of special safety training from OMSL); Marty Boggs & Planck (15 months probation each of underground miner's certificate, effective 2/7/05; 8 hours of special safety

training from OMSL); Simpson (1 year probation of miner's certificate, effective 12/28/04 + 8 hours special safety training); Caldwell (1 year probation of miner's certificate, effective 1/31/05 + 8 hours special safety training); trial for the remaining defendants scheduled for 7/14/05 **ACTIVE**. Anthony Boggs – Training completed: **Yes – 3/3/05** – Revocation period completed: **Yes – 8/7/05** – Exam passed: **Yes – 11/3/05**. Tony Dean – Training completed: **Yes – 3/3/05** – Revocation period completed: **Yes – 8/6/05**. Jeremiah Caldwell (**NON-ACTIVE**) – Training completed: **Yes – 3/3/05** – Probation completed: **Yes – 1/31/06**. Robert Stump – Revocation completed: **No – 4/13/09** – Probation completed: **No – 4/23/06**.

### **Cases Filed in 2003**

1. **KDMM v. David Gist, Alfred Gibson, Roland Daugherty, Freddie Jones & Charles Moore**, Docket No. 03-MSRC-001 filed: 1/31/03 subject: miners drilled, shot and hauled coal under unsupported mine roof **STATUS:** settlement agreements with all 5 Respondents approved by Commission: Gist (suspension of underground mine foreman's certificate for minimum of one year, effective 3/30/03; must re-take and pass underground mine foreman's examination before suspension will be lifted and foreman's certificate reinstated); Gibson (shot firer and drill operator's certificate each suspended for minimum of one year, effective 3/31/03; must complete 8-hour training course for blasters given by KDMM and pass blasters' examination before certificate will be reinstated); Daugherty (shot firer and drill operator's certificate each suspended for minimum of one year, effective 3/11/03; must complete 8-hour training course for blasters given by KDMM and pass blasters' examination before certificate will be reinstated); Jones (probation of shot firer and drill operator's certificate and underground mine foreman's certificate, each for one year, effective 3/11/03); Moore (probation of shot firer and drill operator's certificate and assistant underground mine foreman's certificate, each for one year, effective 3/11/03). David Gist – Probation completed: **Yes – 3/23/04** – Training completed: **Yes – 4/10/03** – passed exam. Alfred Gibson – Suspension period completed: **Yes – 3/31/04**. Roland Daugherty (**NON-ACTIVE**) – Training completed: **Yes – 9/10/04** – Exam passed: **Yes – 9/10/04** – Suspension period completed: **Yes – 9/13/04**. Freddie Jones (**NON-ACTIVE**) – Probation completed: **Yes – 3/11/04**. Charles Moore (**NON-ACTIVE**) – Probation completed: **Yes – 3/11/04**
  
2. **KDMM v. Frank G. Head, Gary Dempsey, Mark Engler, Jason Owen, Timothy Shelton & Nicholas Day**, Docket No. 03-MSRC-002 filed: 2/3/03 subject: company installed waterline in return aircourse of underground mine; foreman failed to conduct preshift examination for hazardous conditions in work area, and crew then worked under unsupported roof in a crosscut **STATUS:** settlement agreements with all 6 Respondents approved by Commission: Head (revocation of underground mine foreman's certificate, surface mine foreman's certificate, and assistant underground mine foreman's certificate, each for one year, effective 4/3/03); Dempsey (probation of underground mine foreman's

certificate and assistant underground mine foreman's certificate, each for one year, effective 3/12/03); Engler (probation of underground mine foreman's certificate for one year, effective 3/12/03); Owen (probation of underground miner's certificate for 10 days, effective 4/4/03); Shelton (probation of underground miner's certificate for 10 days, effective 3/31/03); Day (probation of underground miner's certificate for 10 days, effective 4/3/03); NOTE: prior to KDMM filing this action, Head was discharged by coal company; the other 5 miners were each suspended for 15 days without pay. Frank G. Head (**NON-ACTIVE**) – Revocation period completed: **Yes – 4/3/04**. Gary Dempsey (**NON-ACTIVE**) – Probation completed: **Yes – 3/12/04**. Mark Engler (**NON-ACTIVE**) – Probation completed: **Yes – 3/12/04**. Jason Owen (**NON-ACTIVE**) – Probation completed: **Yes**. Timothy Shelton (**NON-ACTIVE**) – Probation completed: **Yes**. Nicholas Day (**NON-ACTIVE**) – Probation completed: **Yes**

3. **KDMM v. Charles L. Branson**, Docket No. 03-MSRC-003 filed: 2/10/03 subject: section foreman required miners to work under unsupported top to retrieve continuous miner that became stuck (pled guilty in federal court to violating Federal Mine Safety & Health Act of 1977 and was fined \$500 and placed on probation for one year, during which time he was supposed to "forfeit his supervisor's license"; the federal court subsequently released Branson from probation after 8 months) **STATUS:** settlement agreement approved by MSRC; Branson's underground mine foreman's certificate revoked for a minimum of 30 days, effective 3/12/03; if Branson does not re-take and pass the underground mine foreman's examination after the 30-day revocation period has expired, the revocation of his certificate will continue indefinitely. **No longer in mining industry. No attempt on underground mine foreman's exam.**
4. **KDMM v. Jackie Holbrook, Timothy Hopkins & Harold Swiney**, Docket No. 03-MSRC-004 filed: 4/15/03 subject: section foreman, Holbrook, and mine superintendent, Hopkins, required mining crew to move section power center while it was energized, despite miners' complaints that procedure was unsafe; section electrician, Swiney, participated in hazardous procedure **STATUS:** MSRC approved KDMM's settlement with Holbrook regarding both this case and 03-MSRC-005 (revocation of his underground mine foreman's certificate for 2 years, effective 7/3/03); MSRC granted default judgment against Swiney (electrical certificate and underground mine foreman's certificate each suspended for one month, effective 8/21/03, followed by an 11-month period of probation); MSRC approved settlement agreement with Hopkins (revocation of his underground mine foreman's certificate for 3 months, effective 9/11/03; upon expiration of revocation period, Hopkins must take 16 hours of safety training from KDMM prior to re-taking the foreman's examination; if he passes the foreman's exam, Hopkins must personally appear before the Kentucky Mining Board to seek reinstatement; if Hopkins is granted a foreman's certificate by the Mining Board, it will immediately be placed on probation for 2 years). Harold Swiney (**NON-ACTIVE**) – Suspension period completed: **Yes – 8/21/03** – Probation completed: **Yes – 7/21/04**. Timothy Hopkins – Training completed: **Yes – 1/6 & 1/7/04**

5. **KDMM v. Jackie Holbrook**, Docket No. 03-MSRC-005 filed: 4/16/03 subject: section foreman ordered scoop operator to clean up rock fall under unsupported roof in newly-mined break, and when scoop operator refused, the foreman worked under the unsupported roof himself; Holbrook also ordered roof bolting machine operators to bolt a heading in by the unsupported crosscut, in violation of roof control plan; and he also drove scoop through an unsupported open crosscut to clean up loose coal **STATUS:** MSRC approved KDMM's settlement agreement with Holbrook regarding both this case and 03-MSRC-004 (revocation of his foreman's certificate for 2 years, effective 7/3/03) - **NOTE:** see also No. 03-MSRC-014. **Failed to take exam. Now works at a surface mine.**
6. **KDMM v. Johnny Goley**, Docket No. 03-MSRC-006 filed: 5/7/03 subject: section foreman directed miners to work under unsupported mine roof (related to case no. 03-MSRC-001) **STATUS:** MSRC found probable cause on 5/8/03; settlement agreement approved by Commission; Goley's underground mine foreman's certificate and his electrical certificate each placed on probation for 2 1/2 years, effective 5/16/03. Probation completed: **Yes – 11/16/05 – NON-ACTIVE**
7. **KDMM v. Steven Rogers**, Docket No. 03-MSRC-007 filed: 5/9/03 subject: coal truck driver made fake West Virginia surface miner's card to avoid having to take the 40-hour initial training course for surface miners in WV; when he got a job to haul coal in Kentucky, the truck driver presented the phony WV surface miner's card to KDMM so that he would not have to take Kentucky's 24-hour initial training course before taking the Kentucky surface miner's examination **STATUS:** settlement agreement approved by MSRC; Rogers took the 24-hour training course from KDMM, passed the surface miner's exam, and his Kentucky surface miner's card was placed on probation for one year, effective 5/30/03; **NOTE:** Rogers also has obtained his surface miner's certification in West Virginia. Probation completed: **Yes – NON-ACTIVE**
8. **KDMM v. Kenneth Hamilton & Simon Ratliff**, Docket No. 03-MSRC-008 filed: 6/18/03 subject: section foreman on 2nd shift, who was not a certified electrician, received severe electrical shock while working on an energized 4160-volt splice box during a "power move"; MET revived foreman after finding him unconscious and lying face down on mine floor; mine superintendent had not assigned certified electrician to the 2nd shift although crew regularly performed "power moves"; instead, superintendent relied on the section foreman to perform electrical work involved in making power moves; superintendent also installed improper ground monitor relay in surface substation, which rendered the high voltage safety monitoring system inoperative; therefore, when foreman lifted lid off high voltage splice box, the electrical circuit did not automatically deenergize **STATUS:** Commission approved KDMM's settlement agreements with both Hamilton (probation of his underground mine foreman's certificate for 2 years, effective 7/21/03 + 8 hours safety training to be given by KDMM) and Ratliff



(suspension of his electrical certificate, effective 7/21/03, until he has taken 4 hours of electrical training from KDMM's Chief Electrical Inspector and passed Kentucky electrical examination; if Ratliff did not pass the electrical examination within one year, his electrical certificate would have been permanently revoked; underground mine foreman's certificate placed on probation for 2 years, effective 7/21/03). Kenneth Hamilton – Probation completed: **Yes – 7/21/05**. Simon Ratliff (**NON-ACTIVE**) – Training completed: **Yes – 4/20/04** – Exam passed: **Yes – 7/21/04 (new # HD-013-04)** – Probation completed: **Yes – 7/21/05**

9. **KDMM v. Steven E. Hensley**, Docket No. 03-MSRC-009 filed: 7/18/03 subject: West Virginia-certified coal miner who transferred to underground mine in Kentucky didn't take Kentucky underground miner's examination and didn't apply for underground miner's card; miner worked 2 years, 3 months in Kentucky mines before KDMM safety analyst discovered he did not have an underground miner's card, at which time the miner was ordered withdrawn from the mines **STATUS:** Hensley passed the examination and received Kentucky underground miner's card; MSRC approved KDMM's settlement agreement with miner whereby his miner's card was placed on probation for one (1) year, effective 7/29/03. Probation completed: **Yes – 7/29/04 – NON-ACTIVE**
10. **KDMM v. Charles Rose**, Docket No. 03-MSRC-010 filed: 7/18/03 subject: KDMM safety analyst issued notices of non-compliance for foreman's failure to build permanent ventilation stopping and failure to have sufficient air (0 cfm) in the last open crosscut; these violations/hazardous conditions had not been noted in the foreman's preshift examination report, so foreman was also cited for an inadequate preshift report **STATUS:** MSRC found probable cause on 8/14/03; OMSL's settlement agreement with Rose approved by MSRC: 6 months probation of Rose's underground mine foreman's certificate, effective 4/14/05 + 4 hours of special safety training from OMSL. Training completed: **Yes – 5/12/05** – Probation completed: **Yes – 10/14/05 – NON-ACTIVE**
11. **KDMM v. Harold Swiney**, Docket No. 03-MSRC-011 filed: 8/4/03 subject: KDMM charged Swiney, one of the defendants in case no. 03-MSRC-004, with impeding its investigation by falsely testifying - during the Department's investigation of this matter - that he did not know that the power center was moved while it was energized, that he did not participate in the unlawful power move, and that he was working in another area of the mine during the entire time the section equipment was moved **STATUS:** MSRC issued default judgment against Swiney; Swiney's electrician's certificate and underground mine foreman's certificate each revoked for 1 year, effective 10/16/03; this was a "subsequent offense" under KDMM's penalty regulations. Revocation period completed: **Yes**
12. **KDMM v. Robert C. Ratliff, Jr., Eugene Conley, Robert Delong, Robert C. Ratliff, Sr. & Estill Lowe**, Docket No. 03-MSRC-012 filed: 8/28/03 subject: mine superintendent/drill operator was severely injured and the drill helper killed while "shooting from the solid" on 6/13/03; KDMM issued 53 citations to the

mine operator, Cody Mining Company, and has alleged in this Complaint that the mine was operated "with complete disregard for the safety of the mining crew and in wholesale violation of the mine safety laws of the Commonwealth of Kentucky"; some of the alleged violations include: failure to conduct proper preshift examinations for hazardous conditions, inadequate ventilation (no line curtains hung), accumulations of loose coal and coal dust, inadequate rock dusting, blasting multiple places simultaneously, using excessive amounts of explosives, working under unsupported roof, no visible sightlines to project the direction of mining, use of a non-permissible coal drill, use of a non-permissible "boss buggy", transporting explosives in a scoop while a miner rode in the scoop, use of smoking articles underground, and altering the accident scene; KDMM sought the permanent revocation of the various certificates (underground mine foreman's certificates, drill operator & shot firer's certificates, and electrical certificates) held by Ratliff, Jr., Conley, Delong and Ratliff, Sr. **STATUS:** MSRC consolidated this case with no. 03-MSRC-013; MSRC approved KDMM's settlement agreements with all of the defendants: Delong (**shot firer's certificate permanently revoked**, effective 10/17/03 + Delong must take 8 hours of safety training from KDMM prior to returning to work in the mining industry in any capacity); Lowe (miner's card and shot firer's certificate placed on probation for 2 years, effective 10/1/03 + Lowe must take 8 hours of safety training from KDMM); Conley (revocation of underground mine foreman's certificate, surface mine foreman's certificate, drill operator & shot firer's certificate, and conventional shot firer's certificate, each for 5 years, effective 11/19/04); Ratliff, Jr. (revocation of underground mine foreman's certificate & drill operator & shot firer's certificate, each for 5 years, effective 1/5/05); Ratliff, Sr. (revocation of underground mine foreman's certificate, surface mine foreman's certificate, drill operator & shot firer's certificate, and conventional shot firer's certificate, each for 5 years, effective 1/5/05; probation of electrician's certificate for 5 years); in addition, both Conley and Ratliff, Sr. must take 8 hours of special safety training from KDMM before either returns to work in the coal industry. Robert Delong – Training completed: **Yes – 6/7/04**. Estill Lowe (**NON-ACTIVE**) – Training completed: **Yes – 10/27/04** – Probation completed: **Yes – 10/1/05**

NOTE: Ratliff, Sr. pled guilty in federal court to 4 criminal violations of the Federal Mine Safety & Health Act of 1977; he will be sentenced on 5/2/05

13. **KDMM v. Eugene Conley & Robert C. Ratliff, Sr.**, Docket No. 03-MSRC-013 filed: 8/29/03 subject: KDMM charged Conley and Ratliff, Sr., two of the defendants in case no. 03-MSRC-012, with impeding its investigation by testifying falsely about numerous matters during the Department's accident investigation; KDMM sought the permanent revocation of the various certificates held by Conley & Ratliff, Sr. in the first case, but if the MSRC imposed a lesser penalty in that case, KDMM asked the Commission to enhance those penalties to permanent revocation for these "subsequent offenses" **STATUS:** MSRC consolidated this case with No. 03-MSRC-012; both Conley and Ratliff, Sr. admitted in their settlement agreements to testifying falsely; the MSRC's final

orders regarding Conley and Ratliff, Sr. constitute both a "1st offense" and a "subsequent offense" under Kentucky's penalty regulations

14. **KDMM v. Jackie Holbrook**, Docket No. 03-MSRC-014 filed: 9/18/03 subject: Holbrook's underground mine foreman's certificate was revoked for 2 years, effective 7/3/03, pursuant to the settlement of two prior disciplinary cases brought against him by KDMM (see Nos. 03-MSRC-004 and 005); although his foreman's certificate had been revoked, Holbrook held himself out as a certified mine foreman to a new employer, and was performing preshift examinations for hazardous conditions at an underground coal mine when discovered by a KDMM inspector; because of Holbrook's intentional violation of Kentucky law - which requires that the preshift examiner be a certified foreman - and his flagrant disregard of MSRC's order revoking his foreman's certificate, KDMM asked that Holbrook's foreman's certificate be permanently revoked **STATUS: KDMM's settlement agreement with Holbrook approved by the MSRC (Holbrook's underground mine foreman's certificate permanently revoked & his underground miner's certificate placed on probation for 2 years, each effective 11/13/03). Probation completed: Yes – 11/13/05**
15. **KDMM v. James Brewer & Doyle Gray**, Docket No. 03-MSRC-015 filed: 9/26/03 subject: after receiving complaint about drug use at underground mine, KDMM "blitzed" the mine with 6 inspectors; Brewer, a shuttle car operator, was found with 3 cigarettes, a lighter, and a half joint of marijuana; Gray, a continuous miner operator, was found smoking a cigarette; Gray also had 2 other cigarettes and a lighter underground **STATUS: KDMM's settlement agreements with both miners approved by MSRC: Brewer's underground miner's card suspended for 30 days, effective 10/2/03, followed by 18 months probation (NOTE: Brewer was also fired from his job); Gray's underground miner's card placed on probation for one year, effective 10/2/03; both miners must also receive 8-hours of safety training from KDMM within 30 days of settlement. James M. Brewer – Probation completed: Yes – 5/2/05. Doyle Gray – Probation completed: Yes – 10/2/04**
16. **KDMM v. Freddie Hensley**, Docket No. 03-MSRC-016 filed: 11/24/03 subject: MSHA inspector found cigarettes and a lighter underground in shuttle car operated by Hensley **STATUS: MSRC found probable cause on 12/11/03; deposition of Hensley taken on 1/20/04; MSRC approved KDMM's settlement agreement with Hensley: Hensley's underground mine foreman's certificate placed on probation for 18 months, effective 9/7/04 + Hensley must receive 8 hours of special safety training from KDMM within 45 days. Training completed: Yes – 12/9/04 – Probation completed: Yes – 3/7/06 – NON-ACTIVE**
17. **KDMM v. Robert Dotson, Jr.**, Docket No. 03-MSRC-017 filed: 11/24/03 subject: KDMM inspectors requested section foreman to conduct a search for smoking articles after they smelled smoke upon arriving at underground mining section; during that search, a cigarette was found on Dotson's person (between his mining belt and cap light battery) **STATUS: default judgment granted by MSRC;**

Dotson's underground miner's certificate placed on probation for one year, effective 4/13/04 + Dotson must take 8-hour safety training course from KDMM within 30 days (no appeal filed). Probation completed: **Yes – 4/13/05**

18. **KDMM v. Douglas Cowan**, Docket No. 03-MSRC-018 filed: 11/24/03 subject: Cowan, a mine foreman/pre-shift examiner, was cited by an MSHA inspector for "pre-dating" a pre-shift examination for hazardous conditions at underground coal mine (Count 1); as a result, he was discharged by the coal company; approximately 6 weeks later, at another underground coal mine, an MSHA inspector cited Cowan for failing to conduct a pre-shift examination (Count 2) **STATUS:** KDMM's settlement agreement approved by Commission: Cowan's underground mine foreman's certificate and his underground mining instructor's certificate each suspended for 6 months, effective 12/5/03, followed by one year period of probation; Cowan must take 8-hour safety course from KDMM within 30 days of settlement
19. **KDMM v. Gary Cantrell & Jerry Kanes**, Docket No. 03-MSRC-019 filed: 11/24/03 subject: KDMM inspectors conducted a special inspection ("blitz") of underground coal mine at approximately 1:00 AM on 11/6/03; several serious violations were discovered, which were the responsibility of Cantrell, the 3rd shift mine foreman: miners were working underground although the mine's ventilation fan was not operating; Cantrell had failed to conduct a pre-shift examination for hazardous conditions; Cantrell did not have a methane monitor in his possession; none of the 5-man mining crew had a self rescue device within 25 feet of them; the #3 conveyor belt had not been rock-dusted; and an adequate smoking search had not been conducted; Kanes, a general inside laborer, was caught with a pack of cigarettes and a lighter underground, and another cigarette butt was found on the mine floor where the miners were working **STATUS:** KDMM's settlement agreements with Kanes and Cantrell approved by MSRC: Kanes (one year probation of underground miner's certificate, effective 2/10/04 + he must take 8-hour safety course from KDMM within 30 days of settlement); Cantrell (indefinite suspension of his underground mine foreman's certificate, effective 4/14/04, until he takes 8 hours of safety training from KDMM and re-takes and passes the Kentucky underground mine foreman's examination, at which time his foreman's certificate will be placed on probation for 6 months. Gary Cantrell (**NON-ACTIVE**) – Training completed: **Yes – 4/28/04** – Exam passed: **Yes – 4/28/04** – Probation completed: **Yes – 10/28/04**. Jerry Kanes (**NON-ACTIVE**) – Training completed: **Yes – 3/12/04** – Probation completed: **Yes – 2/10/05**
20. **KDMM v. Ray Lamb**, Docket No. 03-MSRC-020 filed: 12/1/03 subject: four federal mine inspectors made "saturation" inspection regarding ventilation and smoking articles at underground mine; MSHA inspectors issued citations for the failure to hang ventilation curtains in several entries (there was no detectable air movement at the mine face) and for the failure to comply with the approved smoking search program (cigarettes and a lighter were found lying in loose coal on the mine floor next to the continuous miner where the 2nd shift section

foreman, Lamb, was located) **STATUS:** KDMM's settlement agreement with Lamb approved by MSRC (Lamb's underground mine foreman's certificate placed on probation for 18 months, effective 2/10/04 + he must take 8-hour safety course from KDMM within 30 days of settlement). Probation completed: **Yes – 8/10/05**

21. **KDMM v. Conley D. Young & James S. Hager**, Docket No. 03-MSRC-021 filed: 12/1/03 subject: KDMM conducted electrical inspection of underground mine over course of two days; numerous serious electrical violations were discovered, which were the responsibility of Young, the electrician, and Hager, the mine superintendent; for example, several ground monitor circuits were "bridged out" (i.e., the safety device was rendered useless) **STATUS:** KDMM's settlement agreement with Young approved by MSRC (probation of Young's electrical certificate for one year, effective 1/5/04 + he must take 4-hour electrical safety training course from KDMM's chief electrical inspector within 30 days); default judgment issued against Hager (underground mine foreman's certificate placed on probation for one year, effective 2/25/04). Conley D. Young (**NON-ACTIVE**) – Training completed: **Yes – 3/8/04** – Probation completed: **Yes – 1/5/05**. James Hager (**NON-ACTIVE**) – Probation completed: **Yes – 2/25/05**
22. **KDMM v. David William West**, Docket No. 03-MSRC-022 filed: 12/10/03 subject: double fatality occurred on 8/28/00 when mantrip cars - operated by hoist system - crashed while going down slope into mine via track; West, who was not a certified hoisting engineer, operated hoist controls on 3rd shift; KDMM alleged that West unlawfully and recklessly used a roof drill bit and electrical tape to engage and hold the "down" button for the hoist when the mantrip cars became stuck on the track; when the hoist operator pushed the mantrip cars with an endloader, a "slack rope condition" resulted while the cars accelerated out-of-control down the slope **STATUS:** KDMM and West entered into settlement agreement, which was approved by the MSRC (effective 1/6/04, West's underground mine foreman's certificate and electrician's certificate each revoked for a period of 3 years; his surface mine foreman's certificate suspended for 3 years; and his hoisting engineer's certificate and underground miner's certificate each placed on probation for 3 years)

### Cases Filed in 2002

1. **KDMM v. Billy R. Stanley**, Docket No. 02-MSRC-001 filed: 1/24/02 subject: intoxicated foreman berated and threatened KDMM inspector **STATUS:** settlement agreement approved by MSRC; Stanley's underground mine foreman's certificate suspended for 6 months, effective 4/15/02, followed by 2 years probation. Suspension period completed: **Yes** – Probation completed: **Yes** – **NON-ACTIVE**
2. **KDMM v. Ted R. Brown**, Docket No. 02-MSRC-002 filed: 2/11/02 subject: training instructor unlawfully sold training certificates **STATUS:** settlement agreement approved by MSRC; Brown's **underground and surface instructor's certificates & underground and surface foreman's certificates each permanently revoked**, effective 4/11/02
3. **KDMM v. Harold Hacker**, Docket No. 02-MSRC-003 filed: 2/28/02 subject: general mine foreman required miners to repeatedly work under unsupported top while cleaning up roof falls and building overcasts; Hacker pled guilty in federal court to violating Federal Mine Safety & Health Act of 1977 and was fined \$3,000 and placed on probation for one year, during which time he could not directly supervise crews of coal miners underground, but could otherwise use his foreman's certificate to supervise section foremen, mine superintendents, etc. **STATUS:** settlement agreement approved by MSRC; Hacker's underground and surface foreman's certificates and underground mining instructor's certificate revoked for 18 months each, effective 2/12/03. Revocation period completed: **Yes** – **8/12/04**
4. **KDMM v. Roamon Phipps**, Docket No. 02-MSRC-004 filed: 4/10/02 subject: roof bolting machine operator in Blue Gem mine seriously injured in roof fall; ATRS was inoperative & miner had not been adequately trained by mine superintendent/owner; after accident, it was learned that owner didn't have workers' comp insurance for the mine **STATUS:** default judgment granted in part; Phipps' underground mine foreman's certificate revoked for 5 years and electrician's certificate revoked for 2 years, each effective 2/24/03; Phipps "pro se" motion to set aside the default judgment was denied. **Deceased** – **NON-ACTIVE**
5. **KDMM v. Billy Ray Thomas & Jesse Cook**, Docket No. 02-MSRC-005 filed: 4/15/02 subject: miner seriously injured while installing water sprays for fire deluge system on conveyor belt while it was in operation during coal production shift; miner's hand was caught between conveyor belt and discharge roller; charges filed against miner, Thomas, and against the maintenance foreman, Cook **STATUS:** Cook's motion to dismiss denied by MSRC on 2/20/03; default judgment against Thomas granted on 10/9/03 (Thomas' underground miner's certificate placed on probation for 1 year); after substantial discovery was taken, Cook filed motion for summary judgment, which was denied by MSRC on

1/14/04; 2-day trial regarding Cook; MSRC issued decision on 4/8/04, finding for Cook because of the lack of a specific "lock and tag" requirement under Kentucky law; the MSRC also ruled against KDMM's theory that Cook's violation of the company's written "lock and tag" policy constituted "just cause" for disciplinary action (no appeal filed). Billy Ray Thomas (**NON-ACTIVE**) – Probation completed: **Yes – 10/9/04**. Jesse Cook (**NON-ACTIVE**) – No sanctions

6. **KDMM v. Billy Wayne Mize & Lanious Mize**, Docket No. 02-MSRC-006 filed: 4/25/02 subject: section foreman, Billy Mize, illegally wired roof bolting machine into pressure pump, and received severe electrical shock; after foreman was taken to hospital, mine superintendent, Lanious Mize, allowed roof bolting machine to remain wired in unsafe manner **STATUS:** default judgment granted; Billy Mize's electrician's certificate revoked for 3 years and underground mine foreman's certificate revoked for 2 years, each effective 10/10/02; Lanious Mize's underground mine foreman's certificate revoked for 3 years, also effective 10/10/02. Billy Wayne Mize – Revocation period completed: **Yes** – has not taken exams. Lanious Mize – Revocation period completed: **Yes** – has not taken exams.
7. **KDMM v. Verling Hall & Lawrence Vanover**, Docket No. 02-MSRC-007 filed: 6/13/02 (consolidated with 01-MSRC-002) subject & status: see above
8. **KDMM v. Corbett Howell**, Docket No. 02-MSRC-008 filed: 6/21/02 subject: inexperienced miner seriously injured and hospitalized when section foreman who was filling in as shot firer did not make sure everyone was "in the clear" before detonating shot into entry where miner was working **STATUS:** settlement agreement approved by MSRC; Howell's **shot firer's certificate permanently revoked** and his underground mine foreman's certificate placed on probation for 2 years, each effective 11/12/02. Probation completed: **Yes – 11/12/05**
9. **KDMM v. Tim Greene**, Docket No. 02-MSRC-009 filed: 9/11/02 subject: section foreman instructed miners to move section power center while it was energized; miner notified KDMM of this unsafe procedure **STATUS:** settlement agreement approved by MSRC; Greene's electrician's certificate revoked for 1 year & his underground mine foreman's certificate placed on probation for 1 year, each effective 9/16/02 (**NOTE:** Greene was discharged by coal company). Probation completed: **Yes – 9/16/03** – Revocation completed: **Yes – 9/16/03** – Exam passed: **Yes – 7/21/04 – NON-ACTIVE**
10. **KDMM v. Bobby Joe Horn**, Docket No. 02-MSRC-010 filed: 11/13/02 subject: training instructor fraudulently issued training certificates **STATUS:** judgment on the pleadings granted/Horn admitted violations; Horn's **underground and surface instructor's certificates permanently revoked**, effective 1/9/03; underground and surface foreman's certificates each placed on probation for 2 years, effective 2/4/03; Horn required to take 2-hour training course provided by

KDMM re: state and federal mine safety laws and KDMM's new penalty regulations. Probation completed: **Yes – 2/4/05**

11. **KDMM v. Robert L. Stewart**, Docket No. 02-MSRC-011 filed: 11/14/02 subject: underground training instructor issued surface training certificates, which he was not approved to do, and conducted training classes at flea market (not an approved facility) **STATUS:** default judgment granted by MSRC; Stewart's **underground instructor's certificate, MET instructor's certificate and underground mine foreman's certificate each permanently revoked**, effective 2/25/03

### **Cases Filed in 2001**

1. **KDMM v. David Sturgill & Paul Clevinger**, Docket No. 01-MSRC-001 filed: 11/16/01 subject: continuous miner operator killed and miner helper injured in roof fall because company was conducting pillar operations "inby" an already pillared area, in violation of pillar removal plan **STATUS:** 4-day trial; MSRC issued decision on 3/28/03: underground mine foreman's certificates of Sturgill & Clevinger each revoked for 4 years; Sturgill & Clevinger appealed the MSRC's decision to Franklin Circuit Court on 4/2/03; KDMM's motion to dismiss the appeal was granted by the Court on 5/23/03; Defendants' motion to alter, amend or vacate the order of dismissal was denied by the Court on 7/10/03; Sturgill & Clevinger appealed the order of dismissal to the Kentucky Court of Appeals, where the case has been briefed and is awaiting decision **ACTIVE**
2. **KDMM v. Charles Hensley, Larry Ison, James Helton, Verling Hall & Lawrence Vanover**, Docket No. 01-MSRC-002 filed: 11/21/01 (consolidated with 02-MSRC-007) subject: repairman, who was not a certified electrician, fatally electrocuted while performing electrical work on energized splice box **STATUS:** settlement agreements with 4 of the defendants approved by the Commission: Hall (5 years revocation of underground mine foreman's certificate, effective 8/9/02); Helton (5 years revocation of electrician's certificate, effective 10/24/02); Hensley (2 years revocation of underground mine foreman's certificate, effective 2/8/03); Vanover (probation of underground mine foreman's certificate for 2 years, effective 3/5/03); case of 5th defendant, Ison, was subject of 2-day trial; MSRC issued decision on 5/13/03, revoking Ison's underground mine foreman's certificate for 18 months (no appeal filed). Lawrence Vanover (**NON-ACTIVE**) – Probation completed: **Yes – 3/5/05**. Charles Hensley – Revocation period completed: **Yes**. Larry Ison (**NON-ACTIVE**) – Revocation period completed: **Yes – 12/13/04**

\* when a certificate is revoked, the settlement or judgment provides that if the miner wants to become re-certified, he must re-take and pass the examination prior to re-applying to the Kentucky Mining Board for re-certification



\*\* when a certificate is **permanently revoked**, the settlement or judgment provides that the miner may not re-apply for that certificate

\*\*\* unless otherwise noted, when a certificate is suspended, the certificate is automatically reinstated upon the expiration of the period of suspension

\*\*\*\* when a certificate is placed on probation, the miner must comply with all state and federal mine safety laws and regulations, or OMSL may seek to revoke the miner's certificate for the remainder of the probationary period